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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,608	08/29/2001	Pierre Rigaux	Q65561	6609

7590 04/02/2003

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 04/02/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

ALK.

Office Action Summary	Application No. 09/940,608	Applicant(s) RIGAUX ET AL.	
	Examiner George R Evanisko	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 19-25, drawn to an electric cable, classified in class 607, subclass 115.
- II. Claims 26-28, drawn to an electrode connector, classified in class 600, subclass 372.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a cable not having removable fixing means but having permanent fixation means for connecting to the electrode or case. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with John Mion on March 28, 2003 a provisional election was made with traverse to prosecute the invention of group I, claims 19-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, it is unclear where the preamble ends and the claim body begins. It is suggested to use "said cable comprising" to mark the transition. In line 2, "said stimulator" is vague since the stimulator has not been positively recited, only functionally recited. It is suggested to use "the stimulator". In line 6, "intended to be connected" is vague since it is unclear if there is a structure on the cable for performing this function. In the next to last paragraph, "arranged" is vague since it is unclear how it is arranged "for transmitting electric measuring signals". In addition, "at least one conductor wire" is inferentially included and has not been positively recited. It is unclear if the applicant is claiming the wire. A suggested claim format is

"An electric cable for an electrical neuromuscular stimulator for measuring muscle a reactions generated by electrical stimulation pulses, the stimulator including an electrical pulse generator arranged in a case of the stimulator for stimulating muscles, said cable comprising

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a cable having a first end and second end with at least one conductor wire between said ends, said first end of said electric cable adapted to connect to an electrode structure which is adapted to be placed on an user's skin of the muscles to be stimulated, said second end of said cable being adapted to connect to said case for receiving the electric pulses from the generator,

wherein the cable includes at least one measuring sensor sensitive to the muscle reactions caused by electric stimulation pulses and adapted to transmit electric measuring signals representative of said muscle reactions to an electronic means in said case for processing said measuring signals, and

wherein said at least one conductor wire is adapted to connect the electrode independently of said sensor.”.

In claim 20, “is intended to be connected...by removable fixing means” is vague. It is unclear if the removable fixing means is being positively recited and if it is the same thing as the connector. In addition, the claim is just a listing of parts because there is no connection listed between the means and the conductor wire. If the “means” is being positively recited, it is suggested to use “wherein said cable further comprises a removable connector connected to said at least one conductor wire and said connector intended to be connected to the electrode”.

In claim 21, “acting as electric contact between the connector and at least one active conducting surface” is vague since the electrode has previously not been positively recited and since the claim is now trying to actively use the electrode in the claim.

In claim 22, “a connector” is inferentially included and it is unclear if it is being positively recited.

In claim 24, "wherein the sensor is in communication with the electronic means" is vague since the electronic means has not been positively recited but the claim is claiming a positive connection to the means. It is suggested to use "wherein the sensor is adapted to be in communication...". In addition, "a wireless signal transmitting means and a wireless signal receiving means" and "a connector" are inferentially included and have not been positively recited. Finally, "one of a ...receiving means" is vague since it conflicts with claim 19. Claim 19 has a transmitting of signals to the electronic means and not a receiving of signals.

In claim 25, "electronic components" is inferentially included.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-22 are rejected under 35 U.S.C. 102(b) as anticipated by Ascher (5355883).

Ascher is capable of meeting the functional use recitations presented in the claim such as the claimed sensor sensitive to muscle reactions since his strain sensor is capable of generating signals based on any mechanical strains (and/or since the structure is similar to the applicants structure shown in the applicant's figures). In addition, due to the 112 second paragraph rejections given above, it is unclear what elements the applicant is intending to positively recite. Finally, Ascher is capable of having the second end connected to a case for receiving pulses since the conductor used for the electrode is just a wire that is capable of either receiving or

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delivering pulses and is an acceleration meter (claim 22) since a piezo-electric ceramic material can be used as the sensor.


Claims 19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Takishima et al (5178156). Takishima is capable of meeting the functional use recitations presented in the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.


George R Evanisko
Primary Examiner
Art Unit 3762

3/31/3

GRE
March 31, 2003